



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 06-44

SUBJECT: HAROLD SWAFFORD  
DISTRICT ATTORNEY  
STOREY COUNTY

**A. JURISDICTION:**

In his capacity as district Attorney for Storey County, Harold Swafford is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

**B. REPORT OF INVESTIGATIVE ACTIVITIES:**

- Received Request for Opinion (complaint) from Eleanor Curtis on July 10, 2006; reviewed attachment of re-election campaign display advertisement (TAB B)
- Received Waiver of Statutory Time requirement on July 28, 2006. Received response from Harold Swafford on August 22, 2006; reviewed attachment of revised re-election campaign display advertisement (TAB C)
- Contacted the Virginia City *Comstock Chronicle* newspaper to verify information regarding placement of the campaign display advertisement (TAB D)
- Contacted the Storey County Government Administrative Offices to verify information regarding phone numbers, e-mails and addresses of county officials
- Reviewed NRS 294A.320, 294A.330, 294A.340 regarding campaign practices (TAB E)

**C. RECOMMENDATIONS:**

Based on investigative activities, the Executive Director recommends the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(2)
- NRS 281.481(7)

**SPECIFIC REASON:**

There are no allegations or credible evidence of fact that amounts to or supports a violation by this public officer of the provisions of NRS Chapter 281. There is no evidence of any phone calls or e-mails having been received by Mr. Swafford during the week his re-election advertisement was published containing his work phone number and e-mail. Furthermore, there is no evidence of any cost to the County that would result in an avoidance of a financial detriment or accrual of a financial gain by Mr. Swafford.

**D. SUMMARY OF REQUEST FOR OPINION:**

This Request for Opinion (complaint) was received from Eleanor Curtis on July 10, 2006.

The complaint alleges that Mr. Swafford violated NRS 281.481(2) and 281.481(7) by including his work phone number and e-mail address in a display advertisement for his re-election which was published July 7<sup>th</sup>, 2006, in the Virginia City *Comstock Chronicle* newspaper.

**E. SUMMARY OF SUBJECT'S RESPONSE:**

A response was received from Harold Swafford on August 22, 2006. In his response, Mr. Swafford admits to placing the advertisement but denies that an ethics violation has occurred. By sworn affidavit, Mr. Swafford states the following:

- That he is an attorney licensed to practice law in the State of Nevada. His Nevada Bar Number is 1370. He is presently serving as the elected District Attorney of Storey County, Nevada. He has personal knowledge of the facts stated hereinafter and he is competent to testify thereto.
- He is seeking re-election as District Attorney and, on July 7, 2006, he published an advertisement in the *Comstock Chronicle* which is the advertisement cited by the complainant in her "request for an opinion." In that advertisement he included his office telephone number and his office e-mail address.
- The *Comstock Chronicle* is published weekly each Friday in Virginia City, Nevada. During the week following the subject July 7, 2006 publication, no one called him by telephone or sent him any e-mail message at either of the numbers stated in the advertisement in reference to the advertisement. On July 14, 2006, he published a new advertisement which did not contain the two subject numbers.
- As stated above, no one called him or e-mailed him during the week of July 7<sup>th</sup>. However, even if someone had called or e-mailed him, there would have been no charge to Storey County. Storey County does not pay for incoming telephone calls or incoming e-mails.
- There was no cost to Storey County for either the e-mail address or the telephone number published in the advertisement. The cost of the advertisement was borne solely by Harold Swafford.

**F. PERTINENT STATUTES AND REGULATIONS:**

**NRS 281.481 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

\* \* \* \* \*

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

\* \* \* \* \*

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

\* \* \* \* \*

**G. RESULTS OF INVESTIGATION:**

***Factual History:***

Storey County District Attorney Harold Swafford published the advertisement which is the subject of the complaint referenced above. The initial advertisement was published one time in a weekly newspaper publication on July 7, 2006. The advertisement, which contained the county government phone number and e-mail, was changed to Mr. Swafford's personal phone number and e-mail address for subsequent publications.

All new information regarding this advertisement published in the *Comstock Chronicle*, beginning with the July 14, 2006 issue, has been verified with the Virginia City *Comstock Chronicle* newspaper and the Storey County Government Administrative Offices.

***Allegations regarding NRS 281.481(2):***

NRS 281.481(2) states:

“A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.

(b) “Unwarranted” means without justification or adequate reason.”

There are no allegations or credible evidence of fact that amounts to or supports a violation by this public officer of the provisions of NRS Chapter 281. There is no evidence of any phone calls or e-mails having been received by Mr. Swafford during the week his re-election advertisement was published containing his work phone number and e-mail. Mr. Swafford replaced the county phone number and e-mail with his personal phone number and e-mail.

***Allegations regarding NRS 281.481(7):***

NRS 281.481(7) states:

“A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the

public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.”

There are no allegations or credible evidence of fact that amounts to or supports a violation by this public officer of the provisions of NRS Chapter 281. There is no evidence of any phone calls or e-mails having been received by Mr. Swafford during the week his re-election advertisement was published containing his work phone number and e-mail. There is no evidence of any cost to the County regarding the publication of this advertisement. Mr. Swafford replaced the county phone number and e-mail with his personal phone number and e-mail.

**H. CONCLUSION:**

The Executive Director hereby recommends the panel find that no just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that Mr. Swafford violated NRS 281.481(2) and 281.481(7), it is further recommended that the complaint be dismissed.

Prepared by: Matt C. DiOrio DATED: August 31, 2006  
MATT C. DI ORIO  
SENIOR INVESTIGATOR

Approved by: L. Patrick Hearn DATED: 9-1-06  
L. PATRICK HEARN  
EXECUTIVE DIRECTOR